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Carlos Solis

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS SOLIS, Individually And On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

NBTY, Inc. and United States Nutrition, Inc.,

Defendants.

Case No.: 16-cv-2090-AJB-WVG

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

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INTRODUCTION

1. The average consumer spends a mere 13 seconds making an in-store purchasing decision, or between 10 to 19 seconds for an online purchase.[1] That decision is heavily dependent on a product's packaging, and particularly the package dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even bother to look at any label information, no less the net weight . . . . Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it's a better value."[2] This lawsuit charges defendants NBTY, Inc. ("NBTY") and United States Nutrition, Inc., ("USN") (collectively referred to as "Defendants") with intentionally packaging its protein products, including (1) its Body Fortress - Super Advanced Whey Protein products ("Body Fortress Product/s") and (2) its Pure Protein - Daily Fit Powder products ("Pure Protein Product/s") (collectively the Body Fortress Products and Pure Protein Products are referred to as the "Products") in large, opaque containers that contain more than 37% empty space. Consumers, in reliance on the size of the containers, paid a premium price for the Products, which they would not have purchased had they known that the containers were substantially empty.

2. Carlos Solis (hereinafter "Plaintiff"), individually and on behalf of all others similarly situated, brings this First Amended Class Action Complaint ("FAC") for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the unlawful and deceptive actions of Defendants, with respect to the packaging of its Products. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other

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[1] http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-windown.html (citing the Ehrenberg-Bass Institute of Marketing Science's report "Shopping Takes Only Seconds…In-Store and Online").

[2] http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers).

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matters, upon information and belief, including investigation conducted by his attorneys.

3. Defendants sell nutritional supplements on a nationwide basis, including under the Pure Protein and Body Fortress brands. Defendants' products are offered for sale in retail stores, such as Costco, BJs, Kroger, Rite Aid, Target and Safeway. Defendants' Products are also sold online, including on websites such as amazon.com. On amazon.com, a 1.2-pound container of Pure Protein – Daily Fit Powder sells for approximately $21.21.[3] Similarly, a 2-pound container of Body Fortress - Super Advanced Whey Protein sells for approximately $17.94.[4]

4. According to naturesbounty.com, "Health-conscious people have trusted Nature's Bounty® products for decades. Our dedication to quality, consistency, and scientific research has resulted in vitamins and nutritional supplements of unrivaled excellence. By combining the latest breakthroughs in nutritional science with the finest ingredients, we're proud to provide you with supplements of unsurpassed quality and value."[5]

5. Plaintiff purchased Defendants' Products, and expected to receive full containers of product. The Products are packaged in non-transparent containers, as depicted below. Plaintiff was surprised and disappointed when he opened the Products to discover that the containers had more than 37% empty space, or slack-fill. Had Plaintiff known about the slack-fill, he would not have bought Defendants' Products or had paid less for the Products.

6. Defendants' conduct violates consumer protection and labeling laws.

JURISDICTION AND VENUE

7. The Federal Court has jurisdiction over this matter pursuant to 28 U.S.C. §

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[3] https://www.amazon.com/Pure-Protein-Daily-Powder-Chocolate/dp/B00KS6X3HS Accessed on September 18, 2015.

[4] http://www.amazon.com/s/ref=nb_sb_ss_i_1_14?url=search-alias%3Dhpc&field-keywords=body+fortress+whey+protein&sprefix=body+fortress+whey+protein%2Chpc%2C192. Accessed on December 22, 2015.

[5] https://www.naturesbounty.com/about-us/. Accessed on December 22, 2015.

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1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(l)(B), in which a member of the putative class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

8. The Federal Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

9. The Federal Court has personal jurisdiction over Defendants because their Products are advertised, marketed, distributed and sold through the State of New York; Defendants engaged in the wrongdoing alleged in this FAC throughout the United States, including the State of New York; Defendants are authorized to do business in the State of New York; and Defendants have sufficient minimum contacts with the State of New York, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial activity with the State of New York.

10. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred within that judicial district, Defendants have marketed and sold the Products at issue in this action in that judicial district, and Defendants conduct business within that judicial district. In addition, Plaintiff resides in that judicial district.

PARTIES

11. Plaintiff is a citizen of the State of New York and resides in West Haverstraw, New York. Sometime in October 2015, Plaintiff purchased Defendants' Products from local shops in Stony Point, New York.[6] Plaintiff

[6] Specifically, Plaintiff purchased Defendants' Pure Protein Product from a local Walgreens and Defendants' Body Fortress Product from Pathmark, also a local store.

purchased the products in reliance on Defendants' packaging in containers made, formed or filled as to be misleading and containing non-functional slack-fill. Had Plaintiff known the truth about Defendants' misrepresentations, he would not have purchased the premium priced Products or would have paid less for them.

12. Defendants NBTY and USN are incorporated in the state of Delaware. NBTY is the parent company of USN, which manufactures and/or distributes the Body Fortress and Pure Protein brands.

FACTUAL ALLEGATIONS

Federal and State Laws Prohibit Non-functional Slack Full

13. Food manufacturers are required to comply with federal and state laws and regulations that govern the labeling and packaging of their products.

14. The Federal Food Drug and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 301 *et seq*., governs the sale of foods, drugs and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic affects the regulations by which the manufacturer must abide. In general, a product is characterized according to its intended use, which may be established, among other ways, by: (a) claims stated on the product's labeling, in advertising, on the Internet, or in other promotional materials; (b) consumer perception established through the product's reputation, for example by asking why the consumer is buying it and what the consumer expects it to do; or (c) the inclusion of ingredients well-known to have therapeutic use, for example fluoride in toothpaste.

15. The Products are characterized by as food because they are labeled and advertised as a type of consumable whey protein powder. More specifically, the Product labels contain numerous ingredients found in or derived from food, including whey protein, cocoa powder, and eggs.

16. According to mayoclinic.org, milk is made up of two types of proteins – casein and whey. "Whey proteins contain higher levels of essential amino acids.

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They are used in ice cream, bread, soup, baby formula, and other food products."[7] According to webMD.com, whey protein is "the protein contained in whey, the watery portion of milk that separates from the curds when making cheese."[8]

Misbranding of Foods

17. Under the Federal Food Drug and Cosmetic Act ("FDCA"), 21 U.S.C. § 343(d), a food shall be deemed to be misbranded if "(a) . . . (1) its labeling is false or misleading in any particular"; or "(d) If its container is so made, formed, or filled as to be misleading."

18. Under the FDCA, the term "false" has its usual meaning of untruthful, while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire Product is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

19. Pursuant to 21 C.F.R. §100.100, a food is misbranded if "its container is so made, formed or filled as to be misleading." In addition, "(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

[7] http://www.mayoclinic.org/drugs-supplements/whey-protein/background/hrb-20060532. Accessed on September 18, 2015.
[8] http://www.webmd.com/vitamins-supplements/ingredientmono-833-whey%20protein.aspx?activeingredientid=833&activeingredientname=whey%20protein. Accessed on September 18, 2015.

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(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package . . . ."

20. New York consumer protection and food labeling laws impose requirements that mirror the federal law. NY AGM. Law § 201 ("Food shall be deemed to be misbranded . . . . If its container is so made, formed, colored or filled as to be misleading.").

Defendants' Products Contain Non Functional Slack-Fill

21. Defendants' Products, including the specific products purchased by Plaintiff, are sold in non-transparent containers that contain different net weights. Each of the containers has significant slack-fill.

22. For example, Defendants' Body Fortress - Super Advanced Whey Protein container, purchased by Plaintiff and depicted below, is roughly 8 inches tall and contains approximately 3 inches of empty space (i.e., over 37% of empty space),

not including the space where the interior of the container narrows and above the indentation where the lid begins. *E.g.* PHOTO A.

BODY
FORTRESS

23. Similarly, Defendants' Pure Protein Product, also purchased by Plaintiff, also contains approximately 37% of the interior of the container is comprised of empty space.

24. Based on information and belief, none of the Slack-fill safe-harbor provisions described in paragraph 19 apply to the Products.

25. First, the Products do not require over 37% empty space to protect the whey product inside the container. Whey is a powder and is not easily damaged when the container it is held is dropped or hit. In fact, one can easily argue that whey would be better protected in a tight box, rather than a loose one.

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26. Second, there is no reason why Defendants' Products contains over 37% empty space because of the machines used for enclosing the contents of the Products. There are similar whey products that contain significantly less slack-fill.

27. Third, unavoidable settling cannot account for over 37% of empty space, for the same reasons stated above (i.e., Defendants competitors' products contain less slack-fill).

28. Fourth, the Products packaging is not required to perform a specific function (e.g. play a role in the preparation or consumption of a food). The packaging is simply there to contain the whey until purchase. Furthermore, 37% empty space cannot account for the presence of a small scooper in the Products' containers.

29. Fifth, Defendants' Products' packaging is not reusable or part of the presentation of the food, and it does not hold significant value or any independent function other than holding the whey.

30. Sixth, the Products do not contain over 37% of empty space because Defendants are unable to increase the level of whey or further reduce the size of the box. As stated above, Defendants' competitors have similar products that contain significantly less empty space.

31. It is Plaintiff's belief that Defendants intentionally incorporated non-functional slack-fill in its packaging of the Products in order to mislead consumers, including Plaintiff and Members of the Class. *Waldman v. New Chapter, Inc.,* 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) ("Misleading consumers is not a valid reason to package a product with slack-fill. *See* 21 C.F.R. § 100.100(a)(1-6).").

32. Judging from the sizes of the containers, a reasonable consumer would expect them to be substantially filled with product. Consumers are misled into believing that they are purchasing substantially more whey product than they receive.

33. On information and belief, consumers have relied upon, and are continuing to rely upon, the size of the Products' containers as the basis for making

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purchasing decisions. Consumers believe that the Products are substantially full because they cannot see the actual contents within the non-transparent container. *See Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 404 (E.D.N.Y. 2010) (finding that a half-filled supplement container could constitute a "misleading representation" that resulted in the unjust enrichment of the manufacturer even though the weight of the product and the number of servings enclosed were clearly listed on the outer packaging).

34. On information and belief, Defendants are selling and will continue to sell the Products using these blatantly deceptive and misleading slack-filled containers.

35. Defendants' packaging and advertising of the Products violates various state laws against misbranding, which contain requirements that mirror the FDCA, as described herein.

Plaintiff Relied on Defendants' Misleading and Deceptive Conduct and Was Injured as a Result

36. The types of misrepresentations made, as described herein, were considered by Plaintiff and Class Members (as would be considered by a reasonable consumer) when deciding to purchase the Products. Reasonable consumers, including Plaintiff and Class Members, attached importance to whether Defendants' Products were misbranded, *i.e.*, not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

37. Plaintiff and the Class Members did not know, and had no reason to know, that the Products contained non-functional slack-fill.

38. Defendants' Product packaging was a material factor in Plaintiff's and the Class Members' decisions to purchase the Products. Based on Defendants' Product packaging, Plaintiff and the Class Members believed that they were getting more Product than was actually being sold.

39. Had Plaintiff known Defendants' packaging was slack-filled, they would not have bought the slack-filled Products or would have paid less for them.

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40. Plaintiff would like to buy Defendant's products in the future, including the Products, especially at a reduced price to account for the slack fill. However, Plaintiff is unsure which of Defendant's products are being misrepresented and which are not.

41. Plaintiff and the Class Members paid the full price of the Products and received less Product than they expected due to the non-functional slack-fill in the Products.

42. There is no practical reason for the non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of the Products being purchased by consumers.

43. As a result of Defendants' misrepresentations, Plaintiff and thousands of others throughout the United States purchased the Products. Plaintiff and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the following National class and subclasses (collectively, the "Class" or "Classes"), defined as:

> Class: All New York residents who made retail purchases of Defendants' Products in containers made, formed or filled as to be misleading and with non-functional slack-fill, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

45. The proposed Classes exclude current and former officers and directors of Defendants, Members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

46. Plaintiff reserves the right to revise the Class definitions based on facts learned in the course of litigating this matter.

47. Numerosity: This action has been brought and may properly be maintained as a class action against Defendants under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the Class. Based on sales of the Products, it is estimated that the Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of Members. The Members of the Class are so numerous that joinder of all Members is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

48. Typicality: Plaintiff's claims are typical of the claims of the Members of the Class as all Members of the Class are similarly affected by Defendants' wrongful conduct, as detailed herein.

49. Adequacy: Plaintiff will fairly and adequately protect the interests of the Members of the Class in that he has no interests antagonistic to those of the other Members of the Class. Plaintiff has retained experienced and competent counsel.

50. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class Members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Members of the Class to individually seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action. If Class treatment of these claims were not available, Defendants would likely unfairly receive thousands of dollars or more in improper revenue.

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51. Common Questions Predominate: Common questions of law and fact exist as to all Members of the Class and predominate over any questions solely affecting individual Members of the Class. Among the common questions of law and fact applicable to the Class are:

i. Whether Defendants labeled, packaged, marketed, advertised and/or sold Products to Plaintiff, and those similarly situated, using false, misleading and/or deceptive packaging and labeling;

ii. Whether Defendants' actions constitute violations of 21 U.S.C. 100.100, *et. seq.*;

iii. Whether Defendants' actions constitute violations of state consumer protection laws;

iv. Whether Defendants omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of its Products;

v. Whether Defendants' labeling, packaging, marketing, advertising and/or selling of Products constituted an unfair, unlawful or fraudulent practice;

vi. Whether Defendants' packaging of the Products constituted nonfunctional slack-fill;

vii. Whether, and to what extent, injunctive relief should be imposed on Defendants to prevent such conduct in the future;

viii. Whether the Members of the Class have sustained damages as a result of Defendants' wrongful conduct;

ix. The appropriate measure of damages and/or other relief; and

x. Whether Defendants should be enjoined from continuing its unlawful practices.

52. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiff knows of no

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difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a Class Action.

53. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

54. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual Members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

55. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all Members of the Class, although certain Class Members are not parties to such actions.

56. Defendants' conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

VIOLATION OF NEW YORK DECEPTIVE TRADE PRACTICES ACT NEW YORK GENERAL BUSINESS LAW § 349

57. Plaintiff re-alleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

58. Plaintiff brings this claim individually and on behalf of the Members of the Class for Defendants' violations of New York's Deceptive Acts or Practices Law, NY GBL § 349.

59. NY GBL § 349 states that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are … unlawful."

60. Any person who has been injured by reason of a violation of NY GBL § 349 may bring an action to enjoin such unlawful act or practice, an action to recover actual damages or fifty dollars, whichever is greater, or both. The court may, in its discretion, increase the award to an amount not to exceed three times the actual damage, up to one thousand dollars, if the conduct was willful or knowing.

61. It is not necessary to prove justifiable reliance under NY GBL § 349. *See Koch v. Acker, Merrall & Condit. Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) ("To the extent that the Appellate Division order imposed a reliance requirement on General Business law 349 . . . claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim.") (internal citations omitted)

62. Defendants engaged in deceptive acts and practices by offering misbranded Products for sale in trade or commerce to Plaintiff and the Class Members by way of packaging the Products in containers made, formed or filled as to be misleading and which contain non-functional slack-fill. Such practices were in violation of NY GBL § 349 and 21 C.F.R. 100.100.

63. Defendants violated federal and New York law because the Products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill and because they are intentionally packaged to prevent consumers from being able to fully see their contents.

64. The foregoing deceptive acts and practices were directed at consumers.

65. Plaintiff and the Class Members lost money or property as a result of Defendants' violations of NY GBL § 349 because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants'

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misrepresentations; and (c) the Products did not have the benefits, or quantities as promised, and as a result the class is entitled to monetary and injunctive relief.

COUNT II
NEGLIGENT MISREPRESENTATION

66. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein, and further allege as follows:

67. Defendants made false representations to Plaintiff and Members of the Class. Specifically, Defendant's made false representations via the packaging of its Products.

68. Defendants as the manufacturer, packager, labeler and initial seller of the Products purchased by Plaintiff and Class Members had a duty to not misrepresent the quantity of the Products and to refrain from selling them in containers made, formed or filled as to be misleading and which contain non-functional slack-fill.

69. Defendants had exclusive knowledge of these material facts not known or reasonably accessible to Plaintiff and Class Members. Defendants had a duty to not make these material misrepresentations, which misled Plaintiff and Class Members.

70. Plaintiff and Members of the Class reasonably relied on Defendants' representation that the Products contain more whey product than actually packaged.

71. In making the representations of fact to Plaintiff and Members of the Class described herein, Defendants failed to fulfill its duties to not misrepresent the material facts set forth above. The direct and proximate cause of this was Defendants' negligence and carelessness.

72. Defendants, in making the misrepresentations, and in engaging in the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiff and Members of the Class.

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73. As the manufacturer of its Products, Defendants is in the unique position of being able to provide accurate information about those Products. Therefore there is a special and privity-like relationship between Defendants and Plaintiff and other consumers, especially considering that consumer essentially enter into a contract every time they purchase Defendant's Products (i.e., Defendants offer their products at a certain price, consumer accept the offer and payment is exchanged for the goods).

74. Defendants had a duty to correct the misinformation it disseminated through its advertising of the Products. By misinforming Plaintiff and Members of the Class, Defendants breached its duty. Defendants also gained financially from and as a result of this breach.

75. By and through such deceit and/or misrepresentations, Defendants intended to induce Plaintiff and Members of the Class to alter their position to their detriment. Plaintiff and Members of the Class relied upon these false representations when purchasing the Products in over sized containers, which reliance was justified and reasonably foreseeable.

76. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and Members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

77. Defendants acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiff and Members of the Class.

78. Plaintiff and Members of the Class are entitled to relief in an amount to be proven at trial, and injunctive relief.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for relief and judgment as follows:

(A) For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as class representative, and designating Plaintiff's counsel as counsel for the Class;

(B) For an Order declaring that Defendants' conduct violated New York Gen Bus Law § 349, and awarding (i) injunctive relief, (ii) actual damages and/or statutory damages (i.e., $50 per GBL 349), whichever is greater or both plus treble actual damages not to exceed $1,000, (iii) prejudgment and post judgment interest, and (iv) reasonable attorneys' fees;

(C) For an Order finding that Defendants made Negligent Misrepresentations, and awarding special, general, and compensatory damages to Plaintiff and the Class;

(D) For compensatory damages in amounts to be determined by the Court and/or jury;

(E) For an order of restitution and all other forms of equitable monetary relief, as pleaded;

(F) For prejudgment interest on all amounts awarded;

(G) For injunctive relief as pleaded or as the Court may deem proper;

(H) For an Order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit as pleaded; and

(I) For such other and further relief as the Court deems just and proper.

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DEMAND FOR TRIAL BY JURY

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: September 27, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: __/s/ Andrei Armas
Abbas Kazerounian, Esq.
Matthew M. Loker, Esq.
Andrei Armas, Esq.
ATTORNEY FOR PLAINTIFF

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